IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Shyam Sundar Sharma
vs
The Industrial Tribunal – Cum – Labour Court, Sri Ganganagar & Anr.

S.B. CIVL WRIT PETIITON NO.2721/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 29th August, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.H.S. Sidhu, Advocate, for the petitioners.
Mr.Rajesh Joshi Advocate for the respondents.

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BY THE COURT: -

This writ petition was filed against the award dated 27.9.2000 passed by the learned Tribunal – Cum – Labour Court, Sri Ganganagar (in short the learned Tribunal) on a reference made to it by the appropriate Government on 6th Sept., 1996. Industrial dispute referred to the learned Tribunal by the Government was to the effect whether non-payment of salary

admissible to the post of Cotton Delivery Clerk by General Manager, Spin-Fed, Spining Unit, Hanumangarh was legal and if not what relief the workman is entitled for.

I have heard Shri H.S. Sidhu, learned counsel for the petitioner and Shri Rajesh Joshi, learned counsel for the respondents.

Having heard them at length, I am satisfied that this is a case worth remand and reasons for such satisfaction are as follow:

The reference was made on the question whether the workman was not entitled to be paid salary of the post of Cotton Delivery clerk. The case set up by the workman in the statement of claim was that he was actually working on the post of Cotton Delivery Clerk. He was being paid as a daily rated labour @ Rs.33/- per day. His statement of claim referred to various orders/documents issued by the officers. He has also placed on record various exhibits. These documents have been referred to in para no.15 of the award, namely Ex.W32 to W45 wherein he has been described as Delivery Clerk. A careful reading of the award would show that the learned Tribunal instead of examining the claim of the workman on the post on

which he was actually working, proceeded to examine the case as if he was claiming regularization on the post of Delivery Clerk. The learned Tribunal on such assumption proceeded to hold that the eligibility or qualification for appointment on the post of Cotton Delivery Clerk was graduate with knowledge of typing in English speed of 40 w.p.m. and in Hindi with speed of 30 w.p.m. and further that learned Tribunal referred to certain case laws also on the question of regularization. In order to satisfy myself about merits of the case, I examined some of the documents which the workman produced before the learned Tribunal as Ex.W32 to W45. I found that in many of them, he has been referred to as Cotton Delivery Clerk, which at lease prima facie raise a question whether the management was taking from him the work on the post of Cotton Delivery Clerk. Not only this, the witnesses produced by the management when subjected to cross-examination, also admitted to this fact. The Asstt Cotton Purchase Officer whose affidavit was filed by the management when subjected to cross-examination admitted that Ex.W32 to W43 were issued by his department and further that the workman was working under him as Cotton Delivery Clerk. Similarly, another witness Akbar Khan, working as Asstt. Cotton Inspector also admitted having issued Ex.W48 and further admitted that the petitioner-workman was still working with them as Delivery Clerk. In the later part of cross-examination

he further stated that he was working as Delivery Man and not as Delivery Clerk. Ex.W48 is a document by which explanation of the petitioner was called for certain mistakes committed by him while working as Delivery Clerk, which fact has also been admitted by this witness in his statement. None of these documents and the fact whether or not the petitioner workman was actually discharging the duties on the post of Delivery Clerk or whether the respondent management was taking from him the work of Delivery Clerk have been examined and commented upon by the learned Tribunal. In my view, the learned Tribunal misdirected itself in not correctly appreciating the industrial dispute on which reference was made to it by the appropriate Government. In the circumstances, the award passed by the learned Tribunal is held to suffer from non-application of mind requiring remand.

In the result, the writ petition is allowed. Impugned award is set aside and the matter is remanded back to the learned Tribunal with the direction to decide it afresh within a period of six months from the date of receipt a copy of this order which may be produced before it by either of the parties. The learned Tribunal is at liberty to allow the parties to lead any additional evidence oral or documentary.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-